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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1956

No. 94

WILLIAM RADOVICH,

Petitioner,

vs.

NATIONAL FOOTBALL LEAGUE, BERT BELL, J. RUFUS KLAWANS, BOSTON YANKS, NEW YORK RANGERS, NEW YORK GIANTS CLUB, PHILADELPHIA EAGLES, THE LOS ANGELES RAMS FOOTBALL CLUB, INC., PITTSBURGH STEELERS FOOTBALL CLUB, WASHINGTON REDSKINS, CHICAGO BEARS FOOTBALL CLUB, INC., CHICAGO CARDINALS FOOTBALL CLUB, DETROIT LIONS FOOTBALL CLUB, GREEN BAY PACKERS, SAN FRANCISCO CLIPPERS, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF OF RESPONDENTS J. RUFUS KLAWANS AND PACIFIC COAST FOOTBALL LEAGUE.

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William Radovich,

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National Football League, Bert Bell, J. Rufus Klawans, Boston Yanks, New York Rangers, New York Giants Club, Philadelphia Eagles, The Los Angeles Rams Football Club, Inc., Pittsburgh Steelers Football Club, Washington Redskins, Chicago Bears Football Club, Inc., Chicago Cardinals Football Club, Detroit Lions Football Club, Green Bay Packers, San Francisco Clippers, et al.,

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PRELIMINARY STATEMENT.

The action was commenced by William Radovich in the District Court of the United States for the Northern District of California, Southern Division, claiming treble damages under the provisions of the Sherman Act. Motion to dismiss the complaint was made upon the grounds:

1. That the complaint indicates a lack of jurisdiction in the Court over the subject matter.

2. That the complaint fails to state a claim upon which relief can be granted.

The said District Court made an order granting the motion to dismiss; judgment was entered thereon.

Upon appeal to the U. S. Court of Appeal, Ninth Circuit, judgment of the District Court was affirmed.

This Court granted petition for certiorari on October 8, 1956.

The conspiracy charged in petitioner's complaint involved the National Football League and some of its member teams, as well as these respondents, the Pacific Coast Football League and J. Rufus Klawans.

The basic issues involved in this writ are substantially the same as to all respondents. A brief has already been filed by respondents National Football League, Chicago Cardinals Football Club, Inc., New York Football Giants Club, Inc., Chicago Bears Football Club, Inc., Detroit Football Company and Los Angeles Rams Football Club.

In the interest of brevity, these respondents hereby adopt the legal arguments contained in the brief of

the foregoing respondents, rather than again setting them forth in this brief.

However, as the respondent J. Rufus Klawans was the Commissioner of the Pacific Coast Football League and never associated in any way with the respondent National Football League, nor with any of its member teams, these respondents submit the following legal arguments in addition to those adopted from the briefs of the other respondents.

SUMMARY OF PETITIONER'S CONTENTIONS.

Petitioner contends, in substance, that respondents are engaged in Interstate Commerce; that respondents have been refused an exemption from anti-trust liability from Congress; that during the period alleged in petitioner's complaint the respondents engaged in conduct forbidden by the anti-trust laws duly passed by Congress; that petitioner has a direct and primary right of action for injury suffered by him as a result of the forbidden conduct on the part of respondents.

Hence, petitioner argues that his complaint states a cause of action.

Upon analyzing the above the following questions become immediately apparent:

1. Were respondents engaged in Interstate Commerce?

2. Were respondents refused an exemption from anti-trust liability?

3. Did respondents engage in conduct forbidden by the anti-trust laws duly passed by Congress?

4. Did any acts of respondents prejudice the public interest by unduly restricting the free flow of interstate commerce? and

5. Assuming that any acts of respondents did so prejudice the public interest was there any injury to petitioner as a proximate result?

These respondents will discuss the above questions in the order listed.

THESE RESPONDENTS WERE NOT ENGAGED IN INTERSTATE COMMERCE

As above stated, petitioner argues that the playing of professional football is interstate commerce, that as a consequence petitioner was engaged in an interstate occupation; that any activities of respondents which harmed petitioner in the matter of his employment constituted a violation of the Sherman Act.

The flaws in the process by which petitioner arrives at such an obvious *non sequitur* are discernible upon cursory examination.

Firstly, petitioner assumes that the playing of professional football is "commerce" as the term is used in the Sherman Act.

Secondly, that the pattern followed by the respondents in the operation of the respective leagues rendered this "commerce"—*interstate* commerce.

The composition and *modus operandi* of professional football is identical with that of "organized baseball".

The Court below, in the instant case, concluded:

> "Its operation has just about the same aspects as baseball."

In *Federal Baseball Club v. National League*, 259 U.S. 200, this Court considered the composition of organized baseball and held that the playing of games in various cities, even though in different states, was purely local and "intrastate" rather than "interstate" in character.

Petitioner in drawing his complaint, sought to come within some of the language contained in one of the opinions in the case of *Gardella v. Chandler*, 172 Federal (2d) 402.

The language, behind which petitioner seeks refuge, states that the local and intrastate character of organized baseball may be changed upon a proper showing than the playing of a baseball game, or the results thereof, were transmitted across state lines by radio or other means.

However, the record in the instant case, shows that at all the times mentioned in petitioner's complaint, none of the respondents engaged in any such activity, and any broadcasting of games, or results, was of a purely incidental and sporadic nature, and neither substantial, organized nor profitable.

Accordingly, petitioner's attempt to convert respondents' activities from that which the *Federal*

Baseball case, supra, held to be a purely local and intrastate business to that which he terms an "interstate" activity, is a clear case of the tail wagging the dog.

RESPONDENTS DO NOT CLAIM THAT PROFESSIONAL FOOTBALL IS EXEMPT FROM ANTI-TRUST LAWS.

These respondents do not contend that professional football or professional baseball or any other sport possesses an exemption from the operation of the Sherman and Clayton Acts.

These respondents do claim however, that the acts complained of in petitioner's complaint are not forbidden by the operation of the Sherman and Clayton Acts.

As stated in *Hunt v. Crumboch,* 143 F. (2d) 902 (3d Circuit):

> "Congress did not undertake by the enactment of the Sherman and Clayton Acts, to prohibit each and every restraint."

Respondents contend that Congress did not intend to include within the scope of anti-trust laws, certain aspects of "organized baseball"; these aspects have been referred to as "the constituents of baseball".

See:

Federal Baseball v. National League, 259 U.S. 200;

U. S. v. Int. Boxing Club of New York, 348 U.S. 236.

For the reasons heretofore and hereafter stated, respondents contend that these same aspects are found in professional football, and by a parity of reason, are *"the constituents of football"* and therefore are not included within the scope of the anti-trust laws.

RESPONDENTS DID NOT ENGAGE IN CONDUCT FORBIDDEN BY THE ANTI-TRUST LAWS.

Petitioner constantly refers to the conduct of respondents in highly dramatic words such as "boycott", "ban" and the "ruination of competitive leagues".

Unfortunately for petitioner, his colorful characterizations cannot change the facts as to what respondents actually did, to-wit, the operation and enforcement of a perfectly valid reserve clause.

The whole framework of organized baseball was considered in the *Federal Baseball* case, supra, including the nature, operation, effect and necessity for a "reserve clause".

Generally speaking a "reserve clause" requires every player to contract with his club to serve it for one year and to thereafter enter into a new contract for the succeeding season at a salary to be determined.

If a player violates the "reserve clause" he is guilty of "contract jumping" and is punished by being treated as ineligible to serve in any club of the leagues until he has been formally reinstated. The leagues keep a list of such ineligible players.

The nature, history and purpose of uniform contracts and reserve clauses in the field of professional sports have been thoroughly considered by the courts and have been found to be not in violation of the anti-trust laws.

The decision of the Court of Appeals in the *Federal Baseball* case, found at 269 Federal 681 at 687, omitted no detail in its consideration of the nature, operation and necessity for a "reserve clause".

Petitioners complaint does not allege a single act upon respondents' part that was not found as a proven fact in the record of the *Federal Baseball* case.

The Court below concluded that the operation of professional football "has just about the same aspects as baseball," and that:

> **"Within the four corners of the complaint, we doubt that the alleged means, restraint by the reserve clause and its enforcement is legally sufficient to support, without more, a conclusion that these means were calculated to prejudice the public or unreasonably restrain interstate commerce."**

NO ACTS OF RESPONDENTS PREJUDICED THE PUBLIC INTEREST BY UNDULY RESTRICTING THE FREE FLOW OF INTERSTATE COMMERCE.

The sole charge laid to respondents by petitioner's complaint is that the former enforced a "reserve clause" in a uniform player's contract.

Petitioner argues that this conduct is in violation of the anti-trust laws because it unduly restricted the

free flow of interstate commerce. Petitioner supports the charge by the further claim that respondents sought by unlawful combination, to control, regulate and dictate the terms upon which organized professional football shall be played throughout the United States.

All respondents can possibly be charged with is treating petitioner as a "contract jumper", which he admittedly was.

In the *Federal Baseball* case, supra, the Court said:

> "The reserve clause and the publication of the ineligible lists, together with other restrictive provisions, had the effect of deterring players from violating their contracts . . . in other words these things had the intended effect, viz. of preventing players from disregarding their obligations."

Apparently the Court saw a public benefit flowing from the restraints rather than a public injury.

Petitioner assumes that respondents' treatment of him as a "contract-jumper" is a matter of public concern. Such is not the fact.

The cases which hold that public injury flows from a restraint upon interstate commerce concern themselves with a public injury of a type that affects prices, diminishes the free flow of goods or brings about a deterioration in the goods or services furnished to the public.

The elimination of petitioner from the line-up of a team in either league would be of little public concern,

and definitely of no public injury, if there were others to replace him.

See:

Hunt v. Crumboch, 143 Fed. (2d) 902.

The Circuit Court, in the instant case, concluded, expressly, that the conduct charged to respondents in petitioner's complaint did not prejudice the public or unreasonably restrain interstate commerce.

Respondents respectfully submit that this conclusion is amply supported by the record, and the legal authorities cited in the Court below, and the respective briefs filed by respondents in this Court.

PETITIONER'S COMPLAINT DOES NOT SHOW AN INJURY TO HIM AS A PROXIMATE RESULT OF ANY BREACH OF THE ANTI-TRUST LAWS BY RESPONDENTS.

Respondents have shown that the conduct charged to them in petitioner's complaint was not in violation of the anti-trust laws.

Further, and of even greater importance, is the obvious defect in petitioner's argument, to-wit, that there is no causal connection between any injury to the petitioner, and any alleged act of respondents which constituted a violation of the anti-trust laws.

The complaint fails to allege facts which show, or even suggest, that the uniform player's contract or reserve clause had a substantial or any effect upon interstate trade or commerce. This is an essential element of his cause of action. Its absence is fatal to his pleading.

As petitioner was not injured by reason of any act of respondents which was forbidden or declared to be unlawful by the anti-trust laws, or which unduly restricted the free flow of interstate commerce, his complaint does not state a cause of action, and was properly dismissed.

The applicable principle of law is stated thusly in *Conference of Studio Unions v. Loew's, Inc.*, 193 F. (2d) 51:

> ". . . in order to state a cause of action under the anti-trust laws a plaintiff must show more than that one purpose of the conspiracy was a restraint of trade and that an act has been committed which harms him. He must show that he is within that area of the economy which is endangered by a breakdown of competitive conditions in a particular industry. Otherwise he is not injured 'by reason' of anything forbidden in the anti-trust laws.
>
> Such a construction is in accordance with the basic and underlying purposes of the anti-trust laws to preserve competition and to protect the consumer. *Recovery and damages under the anti-trust law is available to those who have been directly injured by the lessening of competition and withheld from those who seek the windfall of treble damages because of incidental harm.*"

CONCLUSION.

Summarizing the foregoing, these respondents contend that petitioner's complaint does not show that respondents were engaged in interstate commerce; that

even if it be assumed that it does, that the only acts complained of are matters pertaining to the operation, effect and enforcement of a "reserve clause"; that such a clause has been held to be lawful in organized baseball and not in violation of the anti-trust laws; that the aspects of the reserve clause held valid in organized baseball are equally applicable to organized football; and, finally, that petitioner has not shown that he suffered any injury or damage which proximately resulted from the doing of acts by respondents which were forbidden by the anti-trust laws.

Accordingly, the respondents respectfully urge that the judgment of the United States Court of Appeals for the Ninth Circuit be affirmed and this writ discharged.

Dated, San Francisco, California,
December 26, 1956.

LEO R. FRIEDMAN,
Attorney for said Respondents.

J. BRUCE FRATIS,
Of Counsel.